

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Bunge, S.A., §
Plaintiff, §
vs. §
ADM International Sàrl, §
Defendant, §
and §
ADM International Holdings, Inc. §
Agri Port Services, LLC §
American Petroleum Tankers LLC §
American Petroleum Tankers X LLC §
American River Transportation Co., LLC §
Archer-Daniels-Midland Company §
Ashland Specialty Ingredients G.P. §
Crowley Global Ship Management, Inc. §
Koch Fertilizer, LLC §
Mosaic Fertilizer, LLC §
Garnishees. §
CIVIL ACTION _____
IN ADMIRALTY, Rule 9(h)

**VERIFIED COMPLAINT WITH REQUEST FOR ISSUE OF
PROCESS OF MARITIME ATTACHMENT AND GARNISHMENT**

Bunge, S.A. (“Bunge”) brings this action against ADM International Sàrl, including its ADM Intermare division (“ADMI”), *quasi in rem* pursuant to Supplemental Rule B for Certain Admiralty and Maritime Claims, requesting the issue of writs of maritime attachment and garnishment, including against Garnishees, and states as follows:

Jurisdiction and Venue

1. This is an action within this Court's admiralty jurisdiction pursuant to 28 U.S.C. § 1333 and is an admiralty or maritime claim within Fed. R. Civ. P. 9(h). Bunge further brings this action pursuant to 9 U.S.C. §§ 1, 8 for security for arbitration which Bunge has initiated against

ADMI in London pursuant to a vessel charter party between Bunge and ADMI as more fully detailed below.

2. Venue is proper in this District because the Garnishees, within the meaning of Supplemental Rule B, located, can be found, and/or can be served with process in this District.

3. Venue is also proper in this District because ADMI's property is or soon will be in this District, namely, accounts payable from Garnishees to ADMI.

4. ADMI cannot be found in this District within the meaning of Supplemental Rule B.

The Parties

5. Bunge and ADMI are Swiss corporations.

6. Garnishees each are entities with offices or agents located in this District which, on information and belief as detailed below, Bunge reasonably believe hold accounts which are the property of and/or owing to ADMI.

Facts

7. The ocean bulk vessel M/V ORIENT RISE ("Vessel") was time chartered by Vessel owners Tongli Shipping Pte Ltd to Bunge by a charter party dated December 5, 2018. Bunge sub-chartered the Vessel to ADMI, specifically its ADM Intermare division, by a voyage charter party dated November 27, 2018 to carry a cargo of fertilizer from Ras al Khair, Saudi Arabia, to the Mississippi River.

8. The Vessel arrived off the Mississippi on February 9, 2019, anchored, and then on February 14, 2019 moved upstream to Magnolia Anchorage where the Vessel remained until February 26, 2019. On departure at February 26, 2019, Vessel personnel discovered that the

Vessel's starboard anchor and chain were missing. The anchor was replaced, and the U.S. Coast Guard ordered the owners to carry out a survey to find and recover the anchor.

9. On March 4, 2019, the Vessel arrived at the Vessel's discharge berth MM121 Buoys operated by Garnishee American River Transportation Co., LLC d/b/a ARTCO Stevedoring ("ARTCO"). A combination of anchors and mooring ropes held the Vessel. During discharge, however, some of the Vessel's mooring ropes parted requiring standby towage. Then, the Vessel lost the Vessel's starboard anchor, requiring further tug assistance, and shifting to a berth for repairs before shifting back to complete cargo discharge.

10. On March 20, 2019, the Vessel shifted to anchorage after completing discharge. ARTCO arrested the Vessel in the United States District Court, Eastern District of Louisiana on March 22, 2019 claiming unpaid berthing charges and other costs incurred. The local agent, Garnishee Agri Port Services ("APS"), then intervened as a further claimant against the Vessel for unpaid charges. The United States District Court, Eastern District of Louisiana, on April 17, 2019, required the owners of the Vessel to post security of \$10 million for the release of the Vessel from arrest; owners on April 17, 2019 posted that security.

11. By a compromise contained in a settlement agreement dated July 21, 2021, the ARTCO claim was compromised on the terms set out therein in consideration *inter alia* of a joint and several undertaking by Grace Way Shipping Ltd., Lucky Rise Pacific Ltd., and Tongli Shipping Pte. Ltd. to pay to ARTCO the total amount of \$3,250,000 (inclusive of interest and costs) namely representing less than one-third of the amount of security which Grace Way, Lucky Rise and Tongli Shipping had allegedly been required to provide ("the ARTCO Settlement"). The settlement payment to ARTCO was allegedly made on 6 August 2021.

11. On July 29, 2019 the Vessel owners commenced London arbitration against Bunge. Bunge commenced London arbitration against ADMI on July 31, 2019. The claims in both arbitrations are for indemnity and/or damages for a breach of the charter parties' safe port warranty.

12. Specifically, Bunge claims or will claim against ADMI in the London arbitration for indemnity and/or damages with the following components:

- a. Any sums that the Vessel owners (Tongli Shipping) successfully claim from Bunge in the head reference as losses incurred by them, of at least \$4,852,080.66 plus the costs of retrieving the lost anchor to be determined;
- b. Losses of hire, bunkers consumed, and other expenses incurred in the sum of US\$ 480,454.70;
- c. Estimated potential liability to head owners for costs of at least \$1,080,000 (inclusive of all fees including those of the arbitral tribunal);
- d. Interest for the estimated time of the arbitral proceedings in the total sum of \$557,668.87 as follows:
 - i. Interest of US\$182,812.50 on the settlement sum of US\$3,250,000 (being interest at 4.25% for 1¼ years); and
 - ii. Interest of US\$374,856.37 on the remaining sum of US\$2,082,535.36 (which excludes the claim for costs as damages of US\$1,080,000), being interest at 4.25% for 4 years.
- e. Attorneys and arbitrators' fees of \$830,000 (\$750,000 attorneys' fees, including for proceeding in London arbitration, and \$80,000 for the tribunal's fees);

For a total of \$7,800,204.23.

Count I – Breach of Contract – Security for Arbitration

13. Bunge repeats the foregoing paragraphs.
14. ADMI has breached its maritime contracts with Bunge and caused Bunge damages, which are subject to London arbitration, for which Bunge seeks security by way of funds and other property held by Garnishees, as demanded below.

Count II – Maritime Attachment and Garnishment (Rule B)

15. Bunge incorporates the above paragraphs as if fully set forth herein.
16. Bunge seeks issue of process of maritime attachment so that it may obtain security for its claims in arbitration, including its contractual attorneys' fees and costs.
17. No security for Bunge's claims has been posted by ADMI or anyone acting on its behalf.
18. ADMI cannot be found within this district within the meaning of Rule B, but is believed to have, or will have during the pendency of this action, property and/or assets in this jurisdiction, namely, accounts owed ADMI by garnishees.

Prayer for Relief

WHEREFORE, Bunge prays:

- A. That, in response to Count I, process of maritime attachment be issued to garnish and attach property of ADMI, including but not limited to, accounts payable owed or to be owed from Garnishees to ADMI in the amount of at least **\$7,800,204.23** as detailed above, upon that total amount being garnished and attached, this action to be stayed and the amount to await final award in arbitration and judgment entered on such award by this Court;
- B. That, in response to Count II, since ADMI cannot be found within this District pursuant to Supplemental Rule B, this Court issue an Order directing the Clerk to issue Process of Maritime Attachment and Garnishment pursuant to Rule B attaching all of ADMI's tangible or intangible property or any other funds held by any garnishee, up to the amount of at least the amount demanded herein to secure Bunge's claims, and that all persons claiming any interest in the same be cited to appear and, pursuant to Supplemental Rule B, answer the matters alleged in the Verified Complaint;

C. That, as provided in Supplemental Rule B, such person over 18 years of age be appointed as moved for herein pursuant to Supplemental Rule B and Fed. R. Civ. P. 4(c) to serve process of Maritime Attachment and Garnishment in this action;

D. That this Court award Plaintiffs such other and further relief that this Court deems just and proper.

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Attorneys for Bunge, S.A.

Dated: January 6, 2022

VERIFICATION

I am a Principal of the law firm Simms Showers LLP, of counsel to Bunge.

The facts alleged in the foregoing complaint are true and correct to the best of my knowledge and information based upon the records of Bunge made available to me by Bunge. Bunge's authorized officers are not readily available in this District to make verifications on Bunge's behalf. I am authorized to make this verification on Bunge's behalf.

I further certify that, pursuant to Supplemental Rule B, I caused a search to be made of electronic records and Directory Assistance for addresses and telephone numbers in this District. There is no record of any general or resident agent authorized to accept service of process for defendant ADMI in this District.

Pursuant to 28 U.S.C. § 1746(1), I solemnly declare under penalty of perjury that the foregoing is true and correct.

Executed on January 6, 2022.

/s/ J. Stephen Simms
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